

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 25, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 11HD-004

Hawaii

Approve the Withdrawal of Approximately 1,401.91 Acres from General Lease No. S-4471, Parker Ranch, Inc., Lessee, Parcel 5, Government Lands of Kaohe III, Hamakua, Hawaii, Tax Map Key: 3rd/4-4-15:02 (por.);

Approval in Concept of the Set-Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, of such 1,401.91 Acres for Addition to the Mauna Kea Forest Reserve, Grant of Perpetual Non-Exclusive Easement in Favor of DOFAW over a Portion of Approximately 337.741 Acres of Remaining Lease Lands for Access and Utility Purposes; and Issuance of Immediate Management Right-of-Entry, Parcel 5, Government Lands of Kaohe III, Hamakua, Hawaii, Tax Map Key: 3rd/4-4-15:02 (por.); and

Consent to Extension of Lease Term, General Lease No. S-4471, Parker Ranch, Inc., Lessee, for Approximately 337.741 Acres of Remaining Lands of Parcel 5, Kaohe III, Hamakua, Hawaii, Tax Map Key: 3rd/4-4-15:02 (por.)

APPLICANTS AND REQUESTS:

1) Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), for withdrawal of approximately 1,401.91 acres from General Lease No. S-4471, approval in concept of the set-aside of the same to DOFAW for addition to the Mauna Kea Forest Reserve, and issuance of immediate management right-of-entry to DOFAW covering such 1,401.91 acres.

2) Lessee, Parker Ranch, Inc., for extension of General Lease No. S-4471 as to approximately 337.741 acres remaining after the withdrawal. Parker Ranch, Inc. is requesting an extension of the remaining area of General Lease No. S-4471 for a term of 5 years, commencing on March 1, 2011 and expiring on February 28, 2016 for an aggregate term (initial term plus extension) of 40 years.

LEGAL REFERENCE:

Sections 171-11, 36(d), 36(e) and 37, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Parcel 5, Government Land of Kaohe III, Hamakua, Hawaii, identified by Tax Map Key: 3rd/4-4-15:02, as shown on the attached map labeled Exhibit A. The withdrawal and set-aside covers a 1,401.91-acre portion of the parcel. The requested lease extension affects the remaining 337.741 acres of the parcel.

AREA:

Original lease area –	1,762.668 acres, more or less.
Area of 1984 withdrawal –	23.736 acres, more or less
Area of DOFAW's requested withdrawal –	1,401.91 acres, more or less
Area of staff's recommended lease extension –	337.741 acres, more or less

ZONING:

State Land Use District:	Agriculture
County of Hawaii CZO:	A-40a

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

Pasture purposes, and alternate agriculture on 10% of lands not affected by the Palila Critical Habitat Mitigation easement.

TERM OF LEASE:

35 years, commencing on March 1, 1976 and expiring on February 28, 2011.
Requested extension of 5 years commencing on March 1, 2011 and expiring on February 28, 2016.

LEASE ANNUAL RENTAL:

Current rent is \$1,782.00 due in quarterly installments of \$445.50 on March 1, June 1, September 1 and December 1 of each year.

RENTAL REOPENINGS:

Reopenings in the original term were at the end of the 10th, 20th and 30th years of the term. The last rental reopening occurred on March 1, 2006.

Reopenings for the extended term shall be on February 25, 2011 (immediate reopening).

PURPOSE OF SET-ASIDE:

For addition to Mauna Kea Forest Reserve.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B attached.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

1. Applicant DOFAW shall be required to process and obtain subdivision approval for the area to be withdrawn from TMK: 3rd/ 4-4-15:02, using available Federal Highway Administration (FHWA) and/or State Department of Transportation (SDOT) funding;
2. Applicant DOFAW shall be required to provide survey maps and descriptions according to State DAGS standards for both the withdrawn area and the lands remaining under General Lease No. S-4471, using available FHWA and/or SDOT funding; and
3. Applicant Parker Ranch, Inc. shall be required to pay for an appraisal for the immediate rental reopening.

REMARKS:

General Lease No. S-4471 was sold at public auction on August 28, 1975 to Theresa B.

Lau (Lau) for a period of 35 years commencing March 1, 1976. At its meeting of October 7, 1983, Item F-1-e, the Board of Land and Natural Resources approved the withdrawal of 23.736 acres from the lease and the issuance of a two-year land license to Allied Aggregates Corp. over the withdrawn portion for sand mining and quarrying purposes. The formal withdrawal document was executed by the Chairperson and Lau with an effective date of November 29, 1984.¹

By mesne assignments with consent of the Board, the lease was assigned to Parker Ranch, Inc. (Lessee) by Board action of March 27, 1997, Item D-2, and June 13, 1997, Item D-29. The Chairperson executed the consent to assignment on September 5, 2003.

Withdrawal and Set-Aside, and Grant of Easement to DOFAW

At its meeting of December 14, 2001, Item D-37, and November 15, 2002, Item D-19, the Board approved, as amended, the grant of a 10-year term, non-exclusive easement to the State Department of Transportation (SDOT) in connection with the Saddle Road improvement project for Palila Critical Habitat (PCH) Mitigation purposes. As a condition to granting the PCH Mitigation easement, the Board agreed in principle to extend the terms of General Lease No. S-4471 and other affected leases in accordance with the provisions of Section 171-36(b), HRS, as amended, to assist in compensating the lessees for the lands made subject to the easement. See Exhibit C.²

The Board and SDOT thereafter executed Grant of Non-Exclusive Easement No. S-5665 with an effective date of November 27, 2002 (the PCH Mitigation Easement). The PCH Mitigation Easement restricted Lessee's grazing rights and use of approximately 1,401.91 acres of mauka pasturelands leased under General Lease No. S-4471.³ The easement area

¹ The withdrawn area is located on the south side of Saddle Road and is indicated on Exhibit A Attached, and is now designated by its own Tax Map Key number: 3rd/4-4-15:13.

² The Board action of December 14, 2001, Item D-37, specifically mentions lease extensions under HRS Section 171-36(b), which provides that a lessee can apply for a lease extension in some circumstances for mortgage lending purposes or to amortize the cost of substantial improvements to the premises paid for by the lessee. In this case, Lessee is applying under a separate subsection of the law, HRS 171-36(d), which allows 5-year extensions where a taking or withdrawal results in significant economic hardship. Staff does not believe that the reference to HRS Section 171-36(b) in the Board action of December 14, 2001 should be read to mean that Lessee is barred from seeking the shorter extension under HRS Section 171-36(d).

³ An Amendment of General Lease No. S-4471 entered into on February 5, 2004 stated that the area of the Palila mitigation easement was 1,399.339 acres, which is 2.571 acres less than the 1,401.91 acres set forth in General Lease No. S-5665, the PCH Mitigation Easement. The 1,399.339-acre figure was an estimate that was made prior to the survey of the easement area. As set forth in the PCH Mitigation Easement, the actual area of the easement affecting the Lessee's

was fenced using United States Department of Transportation, Federal Highway Administration (FHWA) and/or United States Department of Defense funds, and domestic and feral ungulates, including cattle and sheep, were removed from the area.

Beginning in 2004 and continuing presently, pursuant to the intent of the Biological Opinion of the U.S. Fish and Wildlife Service (USFWS) for the Saddle Road Realignment and Improvement Project dated July 27, 1998, the Division of Forestry and Wildlife (DOFAW) has conducted a forest restoration program on the PCH Mitigation Easement area for the purpose of providing long-term habitat for Palila at considerable effort to the State and with significant progress to date.

By letter dated October 24, 2009, FHWA advised DLNR that consultations with USFWS had resulted in the issuance of a new Biological Opinion for the Saddle Road project on September 11, 2009 (BO). This action was taken in part because of USFWS' concern that the 10-year term of PCH Mitigation Easement is inadequate to establish and maintain a viable mamane forest capable of supporting a self-sustaining Palila population in compliance with the BO. The BO committed USFWS and FHWA to ensure the PCH Mitigation Easement areas serve as long-term habitat for Palila recovery. The FHWA letter explained that if the PCH Mitigation Easement area is not added to the State's forest system, or otherwise set aside for a term sufficient to restore Palila habitat, FHWA will likely be found in violation of the BO, which could result in the cessation of all activities on the Saddle Road project using federal funding.

To remedy this situation and to retain the significant progress that has been made in the long-term restoration of the site, DOFAW has requested that the PCH Mitigation Easement area be withdrawn from General Lease No. S-4471 and set aside to DOFAW as an addition to the Mauna Kea Forest Reserve. DOFAW will coordinate with SDOT, USFWS and others to ensure that the withdrawn area continues to be managed for PCH Mitigation purposes. The set-aside to DOFAW will be subject to the PCH Mitigation Easement, which will remain in effect until it expires by its own terms.⁴

lands is 1,401.91 acres. It is not clear why the estimated figure was incorporated into the lease amendment. The PCH Mitigation Easement figure controls. Land Division will need to make accounting adjustments/credits as necessary to ensure that Lessee has paid, and going forward will pay, rent that factors in the correct PCH Mitigation Easement area.

⁴ In addition to its effect on portions of General Lease No. S-4471, the PCH Mitigation Easement also affected portions of General Lease Nos. GL S-4475 to KK Ranch, Inc., GL S-4477 to SC Ranch Co., Inc., and GL S-4478 to Boteilho Hawaii Enterprises, Inc., in connection with the Saddle Road improvements project for PCH mitigation purposes. DOFAW has also conducted significant forest restoration activities on those PCH mitigation areas and the Board has already approved the withdrawal and set-asides from the other leases at its meetings of September 9, 2010 (GL S-4475) and December 1, 2010 (GL S-4477 and GL S-4478).

In accordance with the Memorandum of Understanding Regarding Implementation of the Saddle Road Palila Critical Habitat Mitigation, dated August 10, 1999 signed by FHWA, USFWS, SDOT, DLNR and others, all costs related to the subdivision of the lands for the purpose of the set-aside of the PCH Mitigation Easement area shall be borne by FHWA and/or SDOT.

The PCH Mitigation Easement on the subject land includes an access corridor that extends from Saddle Road to the main body of the easement area. See Exhibit A attached. Staff is including a recommendation below that the set-aside to DOFAW cover only the main body of the PCH Mitigation Easement area, i.e. those lands to the east of the dashed line indicated on the map attached as Exhibit A. For the access corridor itself, staff is recommending that the Board grant a perpetual, non-exclusive easement to DOFAW for access and utility purposes over the existing corridor.⁵

Extension of General Lease No. S-4471

Pursuant to the Board actions of December 14, 2001, Item D-37, and November 15, 2002 Item D-19, a lease amendment dated February 5, 2004 reduced the rent under General Lease No. S-4471 from \$9,250 to \$1,806 per year as a result of the PCH Mitigation Easement. Additionally, the amendment expanded the permitted use of the remaining lands under the lease consistent with HRS Section 171-36(c) to allow Lessee to use 10% of the leased area not affected by the easement for alternate agricultural use.

Before the PCH Mitigation Easement went into effect, SDOT contacted the affected lessees and advised them of their right to make a claim under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Relocation Assistance Act). Under the provisions of this Act, the lessees would have been entitled to compensation for actual, reasonable moving expenses, and for permanent improvements made to the leased land affected by the easement in accordance with the leases. Staff understands from SDOT that the lessees did not submit claims for assistance under the Act.

The Lessee is now requesting a 5-year extension of General Lease No. S-4471 under HRS Section 171-36(d), which provides in part that the Board may extend the term of a lease

upon a showing of significant economic hardship directly caused by . . . a taking of a portion of the area of the lease by government action by eminent domain, withdrawal, or conservation easement; provided that the portion taken shall not be less than ten per cent of the entire leased area unless otherwise approved by the board; and provided that the lessee will not be adequately compensated pursuant to the lease provisions.

⁵ The alternative of setting aside the entire PCH Mitigation Easement to DOFAW would effectively result in the dissection of the remaining lease lands into two separate parcels.

In this case, the PCH Mitigation Easement, which is a conservation easement, restricted grazing on more than 10% of the original lease area.⁶ Attached as Exhibit D is a letter dated January 12, 2011 from Lessee stating that it has encountered significant economic hardship directly caused by the placement of the PCH Mitigation Easement on the lease lands. According to Lessee, as a result of the PCH Mitigation Easement, Lessee was forced to decrease its herd size in the area from 1,200 to 1,000 cows in 2006, resulting in a smaller annual calf crop. Lessee reports that in 2010, its total loss in revenue from the PCH Mitigation Easement was \$240,000 and its total increased cost was \$200,000, for a total economic impact of \$440,000. See Exhibit D.

Staff believes that Lessee has demonstrated a significant economic hardship directly caused by the placement of the PCH Mitigation Easement on the land, and that the economic losses were of a nature that could not be recovered under the Relocation Assistance Act. Staff believes that five years is a reasonable amount of time to provide relief to Lessee.

The Hawaii District Land Office staff conducted a site inspection of the lease on December 7, 2010 and confirmed that the perimeter fencing is in place.⁷

The Lessee is compliant with the terms and conditions of the lease with regards to rent, insurance and performance bond. The Lessee is working with NRCS on an updated conservation plan.

The Lessee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The last rental reopening occurred on March 1, 2006. There are no further rental reopenings. There are no outstanding rental reopening issues.

The property has been developed, utilized and maintained by the Lessee as a beef cattle operation, substantially for the purpose for which it was leased (pasture).

Comments were solicited from the government agencies identified below with the results

⁶ The PCH Mitigation Easement restricted grazing on approximately 80% of the lands under General Lease S-4171.

⁷ The site inspection also revealed a small water catchment system constructed on the remaining leasable area that Lessee explained was constructed by DOFAW to support the PCH Mitigation Easement. Land Division files show no formal disposition of the site to DOFAW. Staff will need to confer with DOFAW about the water catchment and return to the Board at a later date with a plan for addressing this item.

indicated.

Agency	Comment
State Department of Transportation, Highways Division	No objections.
DLNR - Division of Forestry and Wildlife	See Exhibit E attached and discussion below.
Department of Agriculture	No comments.
Office of Hawaiian Affairs	Applauds efforts to support recovery of palila.
County of Hawaii Planning Department	No comments.
County of Hawaii Department of Public Works	No response.
U.S. Department of Transportation, Federal Highway Administration	No response.
U.S. Fish & Wildlife Service	Supports the transfer of 1,401.91 acres to the Mauna Kea Forest Reserve.

DOFAW states in its comments attached as Exhibit E that it has no objection to the 5-year lease extension as to 337.741 acres outside the PCH Mitigation Easement area, provided that at the end of the extension period the 337.741 acres will be set aside to DOFAW for inclusion in Mauna Kea Forest Reserve. Lessee has indicated to staff that it is agreeable to the set-aside of land to DOFAW at the end of the 5-year extension.

Staff is recommending that the requested lease extension be granted, subject to DOFAW's requested withdrawal. Finally, staff recommends that no further compensation or rent relief be offered to Lessee as a result of the withdrawal. As discussed above, the Board previously reduced Lessee's rent in proportion to the land area encumbered by the easement. SDOT offered to compensate Lessee under the Relocation Assistance Act when the PCH Mitigation Easement was initially put in place and Lessee did not submit a claim. No further compensation or relief is warranted (other than the rent adjustment mentioned in footnote 3 above).

RECOMMENDATION:

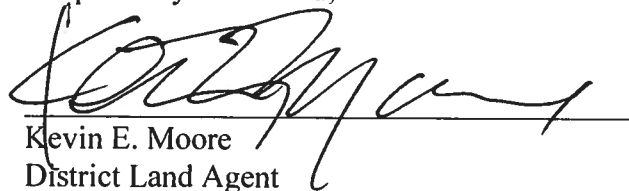
That the Board, subject to the Applicants fulfilling the Applicant requirements listed above:

1. Approve the withdrawal of approximately 1,401.91 acres from General Lease No. S-4471, Parker Ranch, Inc., Lessee. As to the access corridor from Saddle Road to the main Palila Critical Habitat Mitigation Easement area, the withdrawal shall be of a perpetual, non-exclusive access and utility easement only.

2. Approve in concept the set-aside of the withdrawn 1,401.91 acres (but excluding the access corridor to Saddle Road) to the Department of Land and Natural Resources, Division of Forestry and Wildlife, under the terms and conditions cited above, which are by this reference incorporated herein. The set-aside to Division of Forestry and Wildlife for addition to the forest reserve shall be subject to staff returning to the Board at a later date to report the results of the public hearing held pursuant to recommendation number 3 below.
3. Pursuant to HRS Section 183-11, as amended, authorize the Division of Forestry and Wildlife to conduct a public hearing on the Island of Hawaii regarding the proposed addition of approximately 1,401.91 acres (but excluding the access corridor to Saddle Road) to Mauna Kea Forest Reserve at Kaohe III, Hamakua, Hawaii, Tax Map Key: 3rd/4-4-15:02 (por.), and further, pursuant to HRS Section 183-12, as amended, authorize the Chairperson to:
 - A. Set the date, location and time of the public hearing; and
 - B. Appoint a hearing master(s) for the public hearing.
4. Authorize the issuance of a perpetual non-exclusive easement to the Division of Forestry and Wildlife covering the access corridor from Saddle Road to the set-aside area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time.
5. Authorize the issuance of an immediate management right-of-entry permit to the Division of Forestry and Wildlife covering the withdrawn 1,401.91 acres (inclusive of the access corridor) under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. The management right-of-entry shall remain in effect until the executive order setting aside the land to the Division of Forestry and Wildlife is finalized; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

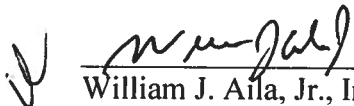
6. Authorize the extension of General Lease No. S-4471, Parker Ranch, Inc., Lessee, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
 - B. The lease extension shall be granted only as to the approximately 337.741 acres of lands that are not encumbered by the main area of the Palila Critical Habitat Mitigation Easement under Grant of Easement No. S-5665, without any compensation, rent reduction or other relief due to Lessee as a result of such limited extension. The lease extension shall additionally be subject to a perpetual, nonexclusive access and utility easement in favor of the Division of Forestry and Wildlife over the existing corridor on the remaining lease lands from Saddle Road to the main area of the Palila Critical Habitat Mitigation Easement;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Interim Chairperson

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Withdrawal of Approximately 1,401.91 Acres from General Lease No. S-4471, Parker Ranch, Inc., Lessee; Approval in Concept of the Set-Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, of such 1,401.91 Acres for Addition to the Mauna Kea Forest Reserve, Grant of Perpetual Non-Exclusive Easement in Favor of DOFAW over a Portion of Approximately 337.741 Acres of Remaining Lease Lands for Access and Utility Purposes; and Issuance of Immediate Management Right-of-Entry; Consent to Extension of Lease Term, General Lease No. S-4471, Parker Ranch, Inc., Lessee, for Approximately 337.741 Acres of Remaining Lands of lease

Project Number: PSF No. 11HD-004

Project Location: Parcel 5, Government Lands of Kaohe III, Hamakua, Hawaii, Tax Map Key: 3rd/4-4-15:02 (por.)

Project Description: Withdraw approximately 1,401.91 acres from General Lease No. S-4471, Parker Ranch, Inc., Lessee and approve in concept the set-aside of the land to DOFAW for inclusion the Mauna Kea Forest Reserve; grant a perpetual non-exclusive easement in favor of DOFAW over a portion of approximately 337.741 acres of remaining lease lands for access and utility purposes; and issue immediate management right-of-entry; consent to extension of lease term, General Lease No. S-4471, Parker Ranch, Inc., Lessee, for approximately 337.741 acres of remaining lease lands

EXHIBIT B

Consulted Parties: State Department of Transportation – Highways; U.S. Department of Transportation, Federal Highway Administration; U.S. Fish and Wildlife Service; and others

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

With respect to the withdrawal from General Lease No. S-4471 and approval in concept of the set-aside to DOFAW, the action is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. With respect to the extension of General Lease No. S-4471, there is no change in use from that previously existing – pasturage of livestock.

Recommendation: The subject land is currently under lease to Parker Ranch, Inc. for pasture purposes pursuant to General Lease No. S-4471, and a portion of the lease premises is encumbered by Grant of Easement No. S-5665 preserving land for Palila Critical Habitat (PCH) Mitigation purposes. The purpose of the withdrawal and set-aside of the portion of the lease encumbered by the easement to DOFAW is to add the land to the Mauna Kea Forest Reserve. An extension of lease as to the remainder of the premises under General Lease No. S-4471 will permit the lessee to continue its present operations for an additional five years. As such, the proposed withdrawal and set-aside and the lease extension would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

The withdrawal from the lease, the approval in concept of the set-aside to DOFAW, and the extension of the lease, will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the proposed action is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to DOFAW's proposed use of a

portion of the lands for an addition to the Mauna Kea Forest Reserve, DOFAW shall be responsible for compliance with Chapter 343, HRS, as amended.

William J. Aila, Jr., Interim Chairperson

Date

D-37.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division

December 14, 2001

Board of Land and Natural Resources
State of Hawaii
Honolulu, HI 96813

PSF: 01HD-412

HAWAII

Grant of Term, Non-Exclusive Easement to the Department of Transportation, Highways Division in Connection with the Saddle Road Improvements Project for Palila Critical Habitat (PCH) Mitigation Purposes Affecting Portions of General Lease (GL) Nos. S-4471, S-4475, S-4477 and S-4478; Implement Act 236 SLH 2001 Mandates; and Issuance of Right-of-Entry for Management purposes; Kahohe 2nd and 3rd and Kalopa, Hamakua, North Hilo, Hawaii, Tax Map Keys: 4-3-10: Por. 2 and 6; 4-4-14: Por. 2 and 3; and 4-4-15: Por. 2

APPLICANT:

Department of Transportation (DOT), Highways Division in coordination with the Federal Highways Administration (FHWA).

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portions of the Government Land of Kahohe 2nd and 3rd and Kalopa, Hamakua, North Hilo, Hawaii, identified by Tax Map Key: 4-3-10: Por. 2 and 6; 4-4-14: Por. 2 and 3; and 4-4-15: Por. 2, as shown on the attached maps labeled Exhibit A.

AREA:

Tax Map Key	Area (acres) Requested	Encumbrance
4-3-10: 2	2,228.384	GL 4478
4-3-10: 8	790.943	GL 4477
4-4-14: 2	1,202.000	GL 4475
4-4-14: 3	921.629	GL 4475
4-4-15: 2	1,399.335	GL 4471
Total Area Requested	6,542.291	

ZONING:

State Land Use District: Agricultural
County of Hawaii CZO: Agricultural (A-40a)

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

12/14/2001

EXHIBIT C

ITEM D-37

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

GL 4471 (TMK: 4-4-15: 2) to Parker Ranch for pasture purposes, expiring February 28, 2001.

GL 4475 (TMK: 4-4-14: Por. 2 and 3) to KK Ranch Inc. for pasture purposes, expiring February 28, 2011.

GL 4477 (TMK: 4-3-10: 8) to Schuman Carriage Company for pasture purposes, expiring February 28, 2011.

GL 4478 (TMK: 4-3-10: 2) to Botelho Hawaii Enterprises for pasture purposes, expiring February 28, 2011.

CHARACTER OF USE:

The long-term restoration of a viable mamane (*Sophora chrysophylla*) forest that can support self-sustaining Palila populations as well as the expansion and/or re-introduction of Palila populations and control of Palila predators and alien species detrimental to the survival of the Palila.

COMMENCEMENT DATE:

Date of issuance.

LEASE TERM:

Ten (10) years

CONSIDERATION:

Fair market value, payable as a one-time payment, to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In compliance with the National Environmental Policy Act and Chapter 343, Hawaii Revised Statutes, as amended, the Final Environmental Impact Statement was submitted to the Office of Environmental Quality Control for publication of its Notice of Acceptance. The Record of Decision, summarizing all of the mitigation commitments for the Saddle Road Improvements Project, was approved on October 30, 1999.

The use of the subject lands for Palila mitigation purposes was identified in the Final Environmental Impact Statement.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Pay for an appraisal to determine the fair market value as a one-time payment.
2. Provide the Department of Land and Natural Resources (DLNR) with survey maps and descriptions for the easement area according to Department of Accounting and General Services, Survey Division standards at the Applicant's own cost.

REMARKS:

The Saddle Road Improvements Project involves the realignment and improvement of Saddle Road from Mamalahoa Highway (State Route 190) to Milepost 6, near the town of Hilo, a distance of approximately 48 miles.

The Saddle Road alignment that best meets its purpose impacts approximately 102.5 acres of federally designated Palila Critical Habitat (PCH) established pursuant to the US Endangered Species Act (ESA). The US Fish and Wildlife Service, which is responsible for the administration of the ESA, has determined that the construction of the improvements within the PCH will not jeopardize the Palila nor adversely modify the PCH, provided, that conservation measures identified in the ROD and the Memorandum of Understanding (MOU) regarding implementation of the Saddle Road PCH mitigation, dated August 10, 1999 are implemented.

The MOU determined that the Palila Mitigation, as presented in the Saddle Road Biological Opinion (BO) for the selected alignment, is necessary and must be implemented to ensure the successful completion of the proposed project. The BO, as a condition of constructing the Saddle Road realignment within the PCH, required the following:

1. Provision of approximately 5,143 acres of land on the north slope of Mauna Kea for Palila habitat restoration.
2. Provision of approximately 1,400 acres of land immediately adjacent to the current Palila population on the West slope of Mauna Kea for Palila habitat restoration.
3. The management of these lands for the re-establishment/sustenance of Palila in accordance with the MOU.

Staff is recommending that the PCH Mitigation Lands easement overlay the subject pasture leases. The easement will impact the leases in that ungulates, including cattle and sheep, will not be permitted to graze within the easement area as part of the requirements of the MOU and BO. This will cause the displacement of the existing lessees from grazing these lands. However, uses not inconsistent with the primary goal of the Palila mitigation program will be allowed.

DOT, in coordination with FHWA will provide compensation to the existing lessees in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979, as amended. Under this Act, the tenants are eligible for reimbursement of actual reasonable expenses for vacation of the property under the relocation provisions, as well as any required payment for improvements to the property. Compensation for improvements would consist of payment for the permanent improvements (buildings, wells, new fences, etc.) made to the properties by the lessees in accordance with the lease.

In recognition of the potential impacts to the State's lessees, the 2001 Hawaii State Legislature enacted Act 236, which directs the Department of Land and Natural Resources to "expedite discussions with representatives from Parker Ranch, K.K. Ranch, Inc., S.C. Corporation, and Boteilho Ent., Inc. to identify and investigate all alternatives that will:

1. Fairly compensate the ranchers for losses suffered as a result of the withdrawal of any leased lands; and
2. Avoid providing exceptions to public land leasing policies.

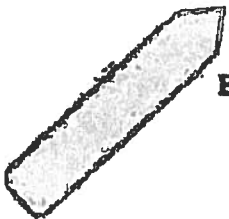
The department shall also authorize the lessees to utilize ten percent of remaining land for alternative agriculture use at no increase in the lease rent rate."

In compliance with the Act, staff is recommending that the lease rents be reduced in proportion to the areas being affected by the PCH Mitigation Lands easement. In addition, staff is recommending that lease extensions, consistent with existing leasing policy, be considered for these leases, up to the maximum term of 55 years as provided in Chapter 171, Hawaii Revised Statutes, as amended. This would allow the lessees another 20 years to recoup the operations consequences of the reduced leased areas. The lease extensions should be considered up to the termination of the leases in 2011.

RECOMMENDATION: That the Board, subject to the Applicant requirements above

- A. Authorize the issuance of an easement covering the subject PCH Mitigation Lands for the purpose of the long term restoration of a viable mamane forest that can support self sustaining Palila populations as well as the expansion and/or re-introduction of Palila populations and control of Palila predators and alien species detrimental to the survival of the Palila, subject to any applicable terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:
 1. All uses within the easement area shall be consistent with the purpose stated above. Any potential uses, including any use by the existing lessees, shall be evaluated and permitted only if the proposed use does not compromise the restoration of the mamane forest.
 2. All management actions shall be consistent with the Palila mitigation goals as guided by the Biological Assessment of the Hawaii State Route 200-Mamalahoe Highway to Milepost 6 Saddle Road Realignment Project, Island of Hawaii, the Biological Opinion of the US Fish and Wildlife Service for the Saddle Road Improvements Project and the US Fish and Wildlife Service's Palila Recovery Plan and all updates thereto.

3. All management plans or actions recommended for the easement area shall be in accordance with DLNR rules and regulations.
 4. Hunting activities that do not compromise the restoration of the mamane forest may be may be allowed (under the authority of DLNR) within the easement area, provided that such activities are consistent with the terms and conditions of the existing leases.
 5. The easement area shall be fenced and both domestic and feral ungulates, including cattle and sheep, removed.
 6. Access to and use of the PCH Mitigation Lands by the existing lessees shall be consistent with its purpose and subject to approval by DOT or its assigns, which will not be unreasonably withheld.
- B. Pursuant to Act 236 SLH 2001, authorize a reduction in lease rental for GL 4471, 4475, 4477 and 4478 in proportion to the leased area being impacted by the easement. The reductions shall be a percent equal to the easement area divided by the total leased area.
- C. Pursuant to Act 236 SLH 2001, amend GL 4471, 4475, 4477 and 4478 by authorizing the lessees to utilize ten percent (10%) of their remaining leased premises for alternative agriculture use at no increase in the lease rent.
- D. Agree in principal to the extension of the terms of the above leases in accordance with the provisions of Section 171-36(b), Hawaii Revised Statutes, as amended and existing Board policies for such extensions.
- E. Authorize the issuance of an immediate right-of-entry to the Applicant to enter upon the easement area for management purposes, subject to the following:
1. Effective upon approval and shall expire one (1) year thereafter, unless extended by the Department.
 2. The Grantee shall observe and comply with all laws, ordinances, rules and regulations of the Federal, State and County governments relative to the use of the subject premises.
 3. Indemnity and hold harmless clause.
 4. Liability insurance coverage clause for agents, consultants and/or contractors of DOT, Highways Division.
 5. Non-discrimination clause.
 6. Hazardous waste clause.
 7. Archeological artifacts clause.



December 14, 2001

8. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

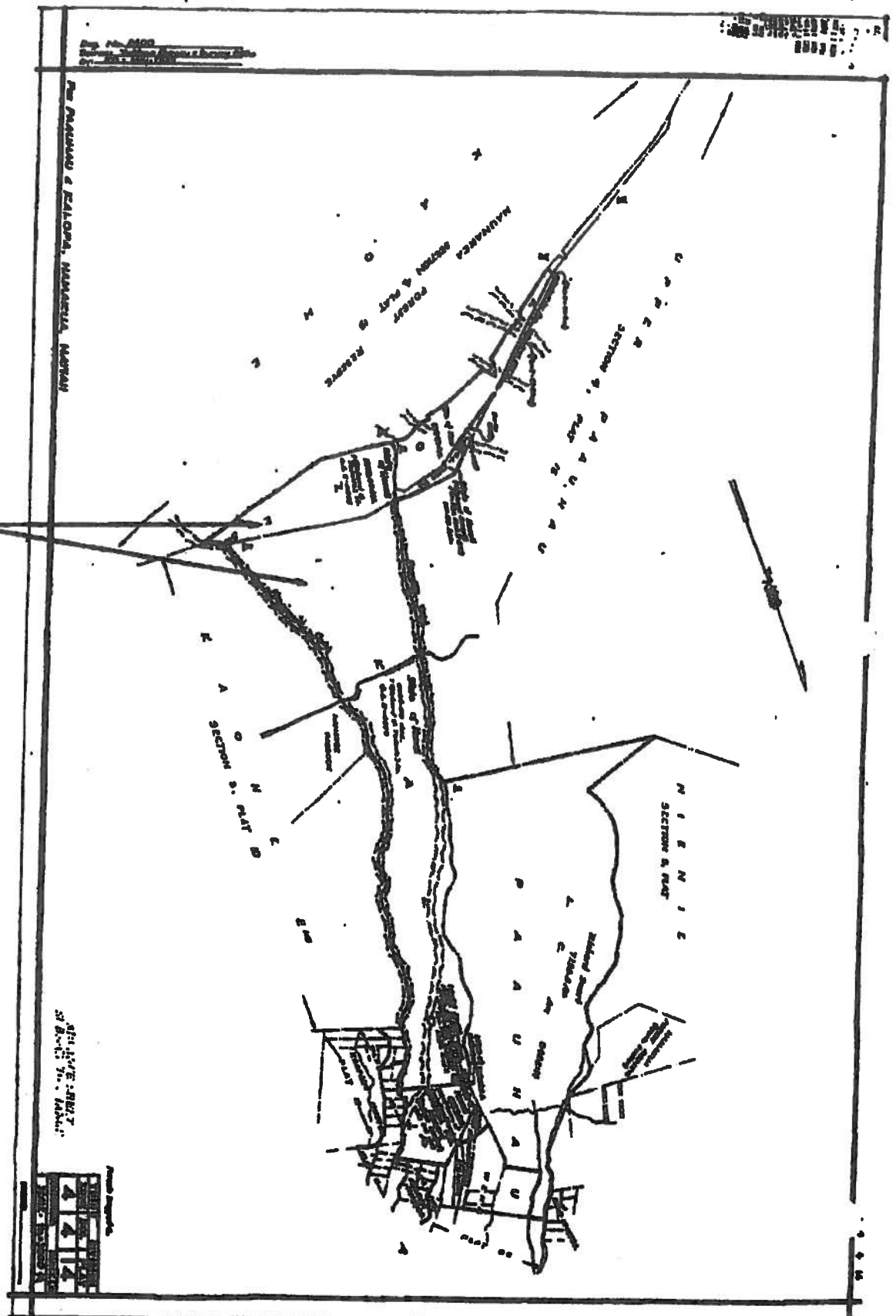
Respectfully submitted,

Gary Martin
GARY MARTIN
Land Agent *G.M.*

APPROVED FOR SUBMITTAL:

Gilbert S. Coloma-Agaran
GILBERT S. COLOMA-AGARAN, Chairperson

GL 4475





January 12, 2011

Kevin Moore
State of Hawaii
Department of Land and Natural Resources
Hawaii District Branch
75 Aupuni Street, Room 204
Hilo, HI 96720

Subject: General Lease No. S-4471

Dear Kevin:

Despite the reduction of rent for General Lease No. S-4471 located along Saddle Road, Parker Ranch has endured significant economic hardship since grazing was restricted on 1399.339 acres to benefit the Grant of Easement No. S-5665 in 2002. While the amendment executed in 2004 reduced the lease rental by \$7,434 annually, that reduction now amounts to a total of only \$36,715 compared to the \$240,000 loss suffered by the ranch for the five-year period since cattle were removed from the easement area in 2006.

When cattle were required to be removed from the area, other sections of the ranch were carrying maximum herd sizes. To accommodate the loss of State-leased land, Parker Ranch was forced to decrease the herd size from 1200 cows to 1000 cows within that section of the ranch. The reduction of the herd by 200 cows resulted in a smaller annual calf crop of 800 head instead of 960 which represents a \$48,000 decrease in revenue. In addition, there was an increased annual cost of production for the remaining herd from \$200 to \$240 per cow as a result of the herd reduction. The decrease in revenue and increase in cost compounded over five years and has never been recovered. In 2010, the total loss in revenue was \$240,000 and the total increased cost was \$200,000 for the five-year period.

The 2004 amendment also authorized utilization of 10 percent of the leased land not affected by the easement for alternate agricultural use. However, drought conditions in the area prevented any type of higher agricultural use by the ranch.

We respectfully ask that this information be taken into consideration when determining whether the extension request is recommended for approval.

Sincerely,

George Wood
Livestock Manager

Brandi Beaudet
Land Manager

67-1435 Mamalahoa Hwy., Kamuela, Hawaii 96743
Tel.: (808) 885-7311 • Fax: (808) 885-5602 • www.parkerranch.com

EXHIBIT D

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
INTERIM DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: Kevin E. Moore, District Land Agent
Land Division

FROM: Paul J. Conry, Administrator
Division of Forestry and Wildlife

RE: Comments on draft Board submittal for set-aside of lands to DOFAW at Kaohe,
and consent to extension of GL S-4471 to Parker Ranch, Inc.

DATE: January 21, 2011

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The Division of Forestry and Wildlife (DOFAW) supports the proposed set-aside of approximately 1,402 acres (TMK (3) 4-4-015: por. 002) as an addition to Mauna Kea Forest reserve for palilia critical habitat mitigation, watershed protection, hunting and other natural resource management purposes.

DOFAW is not opposed to Land Division disposition of the remaining portion of TMK (3) 4-4-015:002 (approximately 337 acres) as a five (5) year extension of GL S-4471 to Parker Ranch, Inc., conditioned on the premise that upon expiration of said five (5) year extension, Land Division will seek to set aside the remaining 337 acres to DOFAW for the above-stated purposes.

Thank you for the opportunity to comment on this item. Should you have any questions please contact Roger Imoto, our Hawaii Branch Manager at 944-4220.

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EXHIBIT E